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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,174	09/24/2003	Tsuyoshi Takami	CP3018-AMP06517	9874

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT PAPER NUMBER

1772

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/672,174

Applicant(s)

TAKAMI ET AL.

Examiner

Christopher P Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of Group I, claims 1-12 in the reply filed on April 8, 2005 is acknowledged.

2. Claims 13-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 8, 2005.

### *Drawings*

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 1, 2, 3, 5, and 6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either

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"Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Specification***

4. The disclosure is objected to because of the following informalities: The brief description of the drawings do not match the drawings, especially the descriptions of Figures 1 and 3 seem to be switched. Also the term "appearance gravity" used in the specification appears to be an error in translation, because the term seems to be describing specific gravity. If the term is actually meant to be "appearance gravity", then there might be a lack of written description because one of ordinary skill in the art would not recognize the term appearance gravity.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3-7 and 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 3 and 4, the limitation "appearance gravity" renders the claim vague and indefinite because it is not understood the meaning of the term "appearance gravity." The term is not described sufficiently in the specification and it is not considered a known term in the art. It appears by the context surrounding the term that the phrase is meant to refer to specific gravity and that the phrase is actually an error in translation. For examining purposes the limitation will be given the same meaning as specific gravity.

Regarding claims 5-7, the limitations "longitudinal fine veins" and "irregular concave-convex veins" render the claims vague and indefinite because it is not understood in light of the specification what are considered "veins." Without a specific definition within the specification, the definition of the limitation is determined by what one of ordinary skill in the art would have recognized as the definition. However, in this case, "vein" can mean either a fissure or crack or it can

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mean a long, wavy strip of a different shade or color. Neither of these known definitions appears to correlate with the description of the invention.

Claims 10-12 are rejected based on their dependence on claims 3, 5, and 7, respectively.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3, 5, 7-8, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Gobidas et al (USPN 5,295,595).

Gobidas et al anticipate a resin tube being made of foamed polypropylene resin (reference number 14 of Figures 1 and 4-12 and col.3, l.45-47). Note the limitation that the tube is "for weaving curtains" receives little patentable weight, because it is a functional limitation in an article claim. Articles are defined by what the article is, not what it does. As long as the article has the same structure and has the capability of

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being used for the claimed purpose, the article anticipates the article claimed. In this case, Gobidas et al teach a resin tube have the same structure as the claimed invention and therefore would be capable of being used for the claimed purpose.

Regarding claim 3, the limitation "appearance gravity" is determined for examining purposes to have the same definition as specific gravity. Therefore, because Gobidas et al teach that the resin tube is formed solely of polypropylene foam, the resin tube inherently has appearance gravity between 0.7 and 0.95.

Regarding claims 5 and 7, the limitation "longitudinal fine veins and irregular concave-convex veins" is determined in the broadest reasonable interpretation to define fissures or strips of different shades or color. In this case, Gobidas et al teach that external surface of the small tube is produced having veins, such as longitudinal fine veins and irregular concave-convex veins, to simulate wood grain or marble finishes (col.3, 1.57-63). Regarding claims 8 and 10-12, the limitation "is used to weave curtains" is a functional limitation in an article claim, which receives little patentable weight, and Gobidas et al anticipate the claims for the same reasons set forth above with regard to the limitation "for weaving curtains" in claim 1.

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7. Claims 1-4 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Tokoro et al (USPN 5,622,756).

Tokoro et al anticipate a resin tube being made of foamed polypropylene resin (Figure 1 and col.7, 1.52-56). Note the limitation that the tube is "for weaving curtains" receives little patentable weight, because it is a functional limitation in an article claim. Articles are defined by what the article is, not what it does. As long as the article has the same structure and has the capability of being used for the claimed purpose, the article anticipates the article claimed. In this case, Tokoro et al teach a resin tube having the same structure as the claimed invention and therefore would be capable of being used for the claimed purpose. Regarding claim 2, Tokoro et al teach that the resin tube has a minimum hole diameter of at least 2.5mm and that the ratio of the hole diameter to the overall diameter of the tube is between 0.45 and 0.85 (col.7, 1.1-3). If the hole diameter is at least 2.5mm, then the overall diameter of the tube is greater than 2.5, and when the inner diameter to outer diameter ratio is 0.85, the ratio of wall thickness to external diameter is 0.15. Therefore, Tokoro et al teach resin tubes having an external diameter and ratio of wall thickness to external diameter within the ranges claimed. Regarding claims 3-4, the limitation "appearance gravity" is



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determined for examining purposes to have the same definition as specific gravity. Therefore, because Tokoro et al teach that the resin tube is formed solely of polypropylene foam, the resin tube inherently has appearance gravity between 0.7 and 0.95.

Regarding claims 8-10, the limitation "is used to weave curtains" is a functional limitation in an article claim, which receives little patentable weight, and Tokoro et al anticipate the claims for the same reasons set forth above with regard to the limitation "for weaving curtains" in claim 1.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 2-4, 6-7, 9-10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gobidas et al (USPN 5,295,595).

Gobidas et al teach all that is claimed in claim 1 as shown above, but fail to explicitly teach the dimensions of the resin tube. Gobidas et al teach that the resin tube is formed as a foamed tube having a wire stiffener running through the hollow center portion thereof (see abstract). One of ordinary skill in the art would have recognized that the appearance gravity or specific gravity would be determined based on the amount of foaming of the polypropylene foam, and that the amount of foaming would be determined through routine experimentation depending on the intended end result and desired aesthetic appeal, absent the showing of unexpected result. The specific size of the tube especially with regards to the external diameter and wall thickness of the tube would likewise be determined through routine experimentation depending on the intended end result and desired aesthetic appeal, absent the showing of unexpected result.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to select the appearance gravity or specific gravity of the polypropylene foam and the size of the external diameter and wall thickness of the tube, depending on the intended end result and desired aesthetic appeal of the tube, absent the showing of unexpected result.

#### **Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Judkins (US 2002/0046816 A1), which teaches that it is well known in the art to use imitation bamboo for weaving curtains. Liebisch (USPN 4,238,435), which teaches a known method of forming imitation bamboo. Float et al (US 2002/0030115 A1); Leemon (US 2003/0019415 A1); Tashiro et al (USPN 4,384,032); Hesse et al (US 2003/0157286 A1); Murota (USPN 3,650,868).

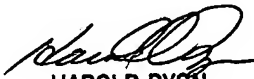
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes  
Examiner  
Art Unit 1772

*CPB*  
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July 8, 2005

  
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*1772*

*7/8/05*